

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF **NASSAU**

SEAN O'SULLIVAN,

Plaintiff(s),

-against-

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK; and THE CHURCH OF THE SACRED HEART OF CAIRO N.Y.,

Defendant(s).

Index No. **[REDACTED]**

Summons

Date Index No. Purchased:

November 13, 2019

To the above named Defendant(s)

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK, 40 North Main Avenue, Albany, Albany County, New York; and
THE CHURCH OF THE SACRED HEART OF CAIRO N.Y., 36 Church Street, Cairo, Greene County, New York

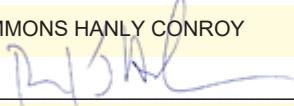
You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is **one or more defendant resides in Nassau County**
which is **located in Nassau County, New York**

Dated: **New York, NY**

November 13, 2019

SIMMONS HANLY CONROY

by 

Paul J. Hanly, Jr.

Attorneys for Plaintiff

112 Madison Avenue, 7th Floor
New York, NY 10016
Tel.: 212-784-6401
Fax: 212-213-5949
phanly@simmonsfirm.com

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

SEAN O'SULLIVAN,

Index No.

Plaintiff,

v.

THE ROMAN CATHOLIC DIOCESE OF ALBANY, NEW YORK; and THE CHURCH OF THE SACRED HEART OF CAIRO N.Y.,

COMPLAINT

Defendants.

JURY TRIAL DEMANDED

Plaintiff Sean O'Sullivan, by his attorneys Simmons Hanly Conroy LLC and the Law Offices of Mitchell Garabedian, brings this action against The Roman Catholic Diocese of Albany, New York; and The Church of the Sacred Heart of Cairo N.Y., and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Nassau pursuant to CPLR 503 in that one or more of the parties resides in this County.

PARTIES

4. Plaintiff Sean O'Sullivan ("Plaintiff") is an individual residing in Oceanside, Nassau County, New York.
5. Defendant The Roman Catholic Diocese of Albany, New York ("Diocese of Albany") is a religious corporation incorporated by a special act of the Legislature of the

State of New York on April 12, 1941, with its principal office at 40 North Main Avenue, Albany, Albany County, New York. The Diocese of Albany is a Roman Catholic diocese. At all relevant times, the Diocese of Albany created, oversaw, supervised, managed, controlled, directed and operated parishes or churches of the Diocese of Albany, including during all relevant times, The Church of the Sacred Heart of Cairo N.Y.

6. Defendant The Church of the Sacred Heart of Cairo N.Y. ("Sacred Heart Church") is a Roman Catholic parish within and under the authority of the Diocese of Albany and is a religious corporation organized pursuant to the Religious Corporations Law with its principal office at 36 Church Street, Cairo, Greene County, New York. At all relevant times, the Diocese of Albany created, oversaw, supervised, managed, controlled, directed and operated Sacred Heart Church.

FACTS COMMON TO ALL CLAIMS

7. Plaintiff and Plaintiff's family were practicing members of the Roman Catholic Church and were parishioners of the Roman Catholic Diocese of Brooklyn when Plaintiff was a minor child.

8. Beginning when Plaintiff was approximately eight years of age, Plaintiff and Plaintiff's family would take regular trips for approximately one week at a time to Doherty's Mountain View Campground in Acra, Greene County, New York. At times during these trips, Plaintiff and Plaintiff's family would attend religious services at Sacred Heart Church.

9. Beginning when Plaintiff was approximately nine years of age, Plaintiff would occasionally visit two friends who were brothers, themselves minor children living with their parents in the area of Gilboa, Schoharie County, New York. When Plaintiff would visit his friends, he would stay overnight at their family home for approximately one week at a time, and the parents of Plaintiff's friends would function as Plaintiff's caregivers during these visits.

10. During the times relevant to the allegations set forth herein, Father Sean

McMahon ("Father McMahon") was assigned to be a priest at Sacred Heart Church. Father McMahon died in 2017.

11. In part through his positions at, within, or for the Diocese of Albany, Father McMahon was put in direct contact with minor children, including the aforementioned friends of Plaintiff, who were parishioners of the Diocese of Albany. Through Father McMahon's contact with these friends of Plaintiff, Father McMahon was put in direct contact with Plaintiff.

12. In approximately 1995, when Plaintiff was approximately eleven years of age, Father McMahon took Plaintiff and Plaintiff's friends on outings on at least two occasions to locations including Auriesville, Montgomery County, New York; and New Ashford, Massachusetts.

13. Father McMahon used such encounters, gained through his position at Sacred Heart Church which granted him access to Plaintiff when Plaintiff was approximately eleven years of age, to sexually assault, sexually abuse, and/or have sexual contact with the Plaintiff on at least one occasion in the State of New York and on at least one occasion in the Commonwealth of Massachusetts in violation of the laws of the State of New York.

Defendants' Responsibility for the Abuse Committed by Father McMahon

14. At all times material hereto, Father McMahon was under the management, supervision, employ, direction and/or control of Defendants Diocese of Albany and Sacred Heart Church.

15. Through his positions at, within, or for the Defendants, Father McMahon was put in direct contact with minor children, including Plaintiff.

16. Father McMahon used his position at, within, or for the Defendants and the implicit representations made by them about his character that accompanied that position, to gain Plaintiff's trust and confidence and to create an opportunity to be alone with, and to sexually touch, Plaintiff.

17. Defendants Diocese of Albany and Sacred Heart Church had the duty to reasonably manage, supervise, control and/or direct priests who served at Sacred Heart Church and specifically, had a duty not to aid pedophiles such as Father McMahon by assigning, maintaining, and/or appointing them to positions with access to minors.

18. Defendants Diocese of Albany and Sacred Heart Church knew and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Father McMahon, who sexually abused Plaintiff.

19. Defendant Diocese of Albany had a duty to Plaintiff to properly supervise Diocese of Albany priests to ensure that priests did not use their positions with the Diocese of Albany as a tool for grooming and assaulting vulnerable children. Defendant Diocese of Albany knew or should have known that Father McMahon used his positions with the Diocese of Albany to sexually abuse minor children, including Plaintiff.

Consequences of the Abuse

20. Plaintiff suffered personal, physical, and psychological injuries and damages as a result of Father McMahon's actions, as well as other damages related thereto, as a result of the childhood sexual abuse Plaintiff sustained.

21. As a direct result of the Defendants Diocese of Albany's and Sacred Heart Church's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Father McMahon's sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction

22. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

23. Defendants Diocese of Albany and Sacred Heart Church owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Father McMahon in his role as priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer, to insure that Father McMahon did not use his assigned position to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

24. Defendant Diocese of Albany at all relevant times held the parishes of the Diocese of Albany out to be safe places for minors to attend, and its priests as individuals to whom it was safe to entrust the care of minor children. Defendant Diocese of Albany entered into an express and/or implied duty to safely treat Plaintiff and assumed the duty to protect and care for him.

25. Father McMahon sexually assaulted, sexually abused, and/or had sexual contact with Plaintiff in approximately 1995 when Plaintiff was a minor.

26. Defendants Diocese of Albany and Sacred Heart Church negligently hired, retained, directed, and supervised Father McMahon, though they knew or should have known that Father McMahon posed a threat of sexual abuse to minors.

27. Defendants Diocese of Albany and Sacred Heart Church knew or should have known of Father McMahon's propensity for the conduct which caused Plaintiff's injuries prior to, or at the time of, the injuries' occurrence.

28. Defendants Diocese of Albany and Sacred Heart Church were negligent in failing to properly supervise Father McMahon.

29. The sexual abuse of children by adults, including priests, is a foreseeable

result of negligence.

30. At all times material hereto, Defendants Diocese of Albany's and Sacred Heart Church's actions were willful, wanton, malicious, reckless, negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

31. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

32. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION

Negligence/Gross Negligence

33. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 21 as if fully set forth herein.

34. Defendants Diocese of Albany and Sacred Heart Church knew, or were negligent in not knowing, that Father McMahon posed a threat of sexual abuse to children.

35. The acts of Father McMahon described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his respective employment, appointment, assignment, and/or agency with Defendants Diocese of Albany and Sacred Heart Church.

36. Defendants Diocese of Albany and Sacred Heart Church owed Plaintiff, a minor at the relevant times of abuse, a duty to protect him from Father McMahon's sexual deviancy and the consequential damages, both prior to and/or subsequent to Father McMahon's misconduct.

37. Defendants Diocese of Albany's and Sacred Heart Church's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

38. Defendants Diocese of Albany and Sacred Heart Church:

- a. gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others;
- b. failed adequately to supervise the activities of Father McMahon;
- c. permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, upon premises or with instrumentalities under their control; and
- d. allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint to occur.

39. At all times material hereto, with regard to the allegations contained herein, Father McMahon was under the supervision, employ, direction and/or control of Defendants Diocese of Albany and Sacred Heart Church.

40. At all times material hereto, Defendants Diocese of Albany's and Sacred Heart Church's actions were willful, wanton, malicious, reckless, negligent and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

41. As a direct and/or indirect result of said conduct, Plaintiff has suffered and will continue to suffer the injuries and damages described herein.

42. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION**Negligent Infliction of Emotional Distress**

43. Plaintiff repeats and re-alleges each and every allegation set forth in

paragraphs 1 through 21 as if fully set forth herein.

44. As described above, the actions of Defendants Diocese of Albany and Sacred Heart Church, their agents, servants, and/or employees were conducted in a negligent and/or grossly negligent manner.

45. Defendants Diocese of Albany's and Sacred Heart Church's actions endangered Plaintiff's safety and caused him to fear for his own safety.

46. As a direct and proximate result of Defendants Diocese of Albany's and Sacred Heart Church's actions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered and will continue to suffer the severe injuries and damages described herein, including but not limited to, mental and emotional distress.

47. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally and/or in the alternative liable to the Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

WHEREFORE Plaintiff demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proved at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding prejudgment interest to the extent permitted by law;
- D. Awarding costs and fees of this action, including attorneys' fees, to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: November 13, 2019
New York, New York

Respectfully Submitted,

/s/ Paul J. Hanly, Jr.
Paul J. Hanly, Jr.
phanly@simmonsfirm.com
Jayne Conroy
jconroy@simmonsfirm.com
Andrea Bierstein
abierstein@simmonsfirm.com
SIMMONS HANLY CONROY LLC
112 Madison Avenue
New York, NY 10016
(212) 784-6401 Telephone
(212) 213-5949 Facsimile

Attorneys for Plaintiff

Of counsel:

Mitchell Garabedian
mgarabedian@garabedianlaw.com
William H. Gordon
wgordon@garabedianlaw.com
LAW OFFICES OF MITCHELL GARABEDIAN
100 State Street, 6th Floor
Boston, MA 02109
Phone: (617) 523-6250